

HOUSE BILL NO. 580

INTRODUCED BY CAFERRO, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TERMS FOR PROVIDING UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING UNEMPLOYMENT BENEFITS TO DISLOCATED WORKERS IN TRAINING AND ELIGIBLE PART-TIME WORKERS; CREATING AN ALTERNATE BASE PERIOD FOR CALCULATING BENEFITS FOR INDIVIDUALS WITH WORK HISTORIES SHORTER THAN USED FOR THE TRADITIONAL BASE PERIOD; PROVIDING UNIFORM BENEFITS TO VICTIMS OF DOMESTIC VIOLENCE ~~AND OTHERS WITH GOOD PERSONAL CAUSE OR COMPELLING FAMILY REASONS TO LEAVE EMPLOYMENT~~; AMENDING SECTIONS 39-51-201, ~~39-51-2101~~, 39-51-2111, AND 39-51-2201, ~~AND 39-51-2302~~; MCA; AND PROVIDING AN EFFECTIVE DATE ~~AND A CONTINGENT TERMINATION DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Benefits for dislocated workers.** (1) An unemployed individual who is participating in training programs that are approved by the department by rule and determined to be necessary for reemployment is not disqualified from receiving benefits if the department has determined that:

(a) the unemployed individual is unlikely to return to employment in the unemployed individual's principal occupation or previous industry because of a diminishing demand for the unemployed individual's skills in the local labor market;

~~—— (b) the unemployed individual has a 5-year or more history of employment;~~

~~(e)(B)~~ the training program enhances the unemployed individual's marketable skills and earning potential;

and

~~(d)(C)~~ the training program is targeted to those industries or skills that are in high demand within the labor market.

(2) An unemployed individual who is attending dislocated worker training under subsection (1) may receive up to 26 weeks of training benefits if that individual is an exhaustee as provided in 39-51-2501.

(3) (a) Training benefits must be paid at the weekly benefit amount during the applicable benefit year under the same terms and conditions as regular benefits are paid.

(b) Training benefits are to be paid:

1 (i) before payment of any extended benefits;

2 (ii) after payment under any similar federally funded program; and

3 (iii) only for weeks during which the unemployed individual is attending dislocated worker training.

4 (4) An unemployed individual who receives training benefits under this section or under any other
5 additional benefits program for training is not eligible for training benefits under this section for 5 years from the
6 last receipt of training benefits under this section or under any other additional benefits program for training.

7 (5) An employer's account may not be charged for payment of training benefits to an individual.

8 (6) The department may consult with all base year employers in determining appropriate training
9 programs and the granting of training benefits in general.

10
11 **NEW SECTION. Section 2. Part-time worker eligibility.** An individual who is otherwise eligible for
12 benefits may not be considered ineligible for benefits solely for the reason that the individual seeks, applies for,
13 or accepts only part-time work instead of full-time work.

14
15 **Section 3.** Section 39-51-201, MCA, is amended to read:

16 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise,
17 the following definitions apply:

18 (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of
19 payment, for employment during a calendar year.

20 (2) "Base period" means the period that is used to compute an individual's benefit rights under
21 39-51-2105 and consists of:

22 (a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an
23 individual's benefit year. ~~However, in the case of:~~

24 (b) an alternate base period for an individual who does not have sufficient wages in the base period
25 provided in subsection (2)(a) to qualify for benefits. The alternate base period consists of the 4 most recently
26 completed calendar quarters immediately preceding the first day of the individual's benefit year.

27 (c) the applicable base period under the unemployment law of the paying state for a combined-wage
28 claim filed pursuant to the arrangement approved by the secretary of labor of the United States; ~~the base period~~
29 ~~is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the~~
30 ~~qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined~~

1 ~~in 39-71-116, or a similar statute of another state or the United States, the base period means; or~~

2 (d) the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for
3 unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred for
4 an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of
5 a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States.

6 (3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with
7 the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year
8 is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed
9 new claim. A subsequent benefit year may not be established until the expiration of the current benefit year.

10 ~~However, in the case of a combined wage claim pursuant to the arrangement approved by the secretary of labor~~
11 ~~of the United States, the base period is the period applicable under the unemployment law of the paying state.~~

12 HOWEVER, IN THE CASE OF A COMBINED-WAGE CLAIM PURSUANT TO THE ARRANGEMENT APPROVED BY THE SECRETARY
13 OF LABOR OF THE UNITED STATES, THE BASE PERIOD IS THE PERIOD APPLICABLE UNDER THE UNEMPLOYMENT LAW OF THE
14 PAYING STATE.

15 (4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with
16 respect to the individual's unemployment.

17 (5) "Board" means the board of labor appeals provided for in ~~Title 2, chapter 15, part 17~~ 2-15-1704.

18 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
19 30, September 30, or December 31.

20 (7) "Contributions" means the money payments to the state unemployment insurance fund required by
21 this chapter but does not include assessments under 39-51-404.

22 (8) "Department" means the department of labor and industry provided for in ~~Title 2, chapter 15, part 17~~
23 2-15-1701.

24 (9) "Domestic partner" means a person other than a spouse with whom one cohabitates.

25 ~~(9)(10)~~ (a) "Domestic or household service" means employment of persons other than members of the
26 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,
27 including but not limited to housecleaning and yard work.

28 (b) The term does not include employment beyond the scope of normal household or domestic duties,
29 such as home health care or domiciliary care.

30 ~~(10)(11)~~ "Employing unit" means any individual or organization, including the state government and any

1 of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust,
2 estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has
3 filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,
4 trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more
5 individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q).
6 All individuals performing services within this state for any employing unit that maintains two or more separate
7 establishments within this state are considered to be employed by a single employing unit for all the purposes
8 of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee
9 of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether
10 the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the
11 employing unit has actual or constructive knowledge of the work.

12 ~~(11)~~(12) "Employment office" means a free public employment office or branch of an office operated by
13 this state or maintained as a part of a state-controlled system of public employment offices or other free public
14 employment offices operated and maintained by the United States government or its instrumentalities ~~as~~ and
15 approved by the department ~~may approve~~.

16 ~~(12)~~(13) "Fund" means the unemployment insurance fund established by this chapter to which all
17 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this
18 chapter must be paid.

19 ~~(13)~~(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
20 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a
21 flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

22 ~~(14)~~(15) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
23 hospital.

24 (16) "Immediate family member" means an individual's spouse or domestic partner, a parent, the parent
25 of a spouse or domestic partner, or a son or a daughter who is a biological, adopted, or foster child, a stepchild,
26 a legal ward, or a child under the care of the individual who is standing in place of a parent if the child is under
27 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

28 ~~(15)~~(17) "Independent contractor" means an individual working under an independent contractor
29 exemption certificate provided for in 39-71-417.

30 ~~(16)~~(18) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education

Assistance Act, 25 U.S.C. 450b(e).

~~(17)~~(19) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

~~(18)~~(20) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection ~~(18)~~(20) ~~(a)~~ in the jurisdiction where the person seeking the benefit lives.

~~(19)~~(21) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(22) "Part-time employment" means work of less than 35 40 hours a week or as otherwise defined by the department by rule.

1 ~~(20)~~(23) "State" includes, in addition to the states of the United States of America, the District of
2 Columbia, Puerto Rico, the Virgin Islands, and Canada.

3 ~~(21)~~(24) "Taxes" means contributions and assessments required under this chapter but does not include
4 penalties or interest for past-due or unpaid contributions or assessments.

5 ~~(22)~~(25) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business
6 enterprise that is wholly owned by that tribe.

7 ~~(23)~~(26) "Unemployment insurance administration fund" means the unemployment insurance
8 administration fund established by this chapter from which administrative expenses under this chapter must be
9 paid.

10 ~~(24)~~(27) (a) "Wages", unless specifically exempted under subsection ~~(24)(b)~~ (27)(b), means all
11 remuneration payable for personal services, including the cash value of all remuneration paid in any medium
12 other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be
13 estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited
14 to:

15 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
16 periods;

17 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service
18 by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

19 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are
20 documented by the employee to the employer for tax purposes.

21 (b) The term does not include:

22 (i) the amount of any payment made by the employer for employees, if the payment was made for:

23 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
24 Revenue Code;

25 (B) sickness or accident disability under a workers' compensation policy;

26 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
27 health insurance for the employee or the employee's immediate family; or

28 (D) death, including life insurance for the employee or the employee's immediate family;

29 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
30 expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

~~(25)~~(28) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(26)~~(29) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

~~Section 4.~~ Section 39-51-2101, MCA, is amended to read:

~~"39-51-2101. Total unemployment -- when. (1) An individual who has been in full-time employment is considered to be totally unemployed in any week during which the individual:~~

~~(1)(a) performed no work in employment and earned no wages for employment; or~~

~~(2)(b) performed less than full-time work in employment with wages for employment of less than two times the individual's weekly benefit amount.~~

~~(2) An individual who has been employed part-time but performs no work in employment and earns no wages for employment in any week is considered totally unemployed."~~

Section 4. Section 39-51-2111, MCA, is amended to read:

"39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking.

(1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) An employer's account may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

~~(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.~~

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, sexual assault, or stalking;

(c) medical documentation of domestic violence or a sexual assault; or

(d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section:

(a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

Section 5. Section 39-51-2201, MCA, is amended to read:

"39-51-2201. Weekly benefit amount -- determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly

number of individuals employed during the same preceding calendar year as reported on the contribution reports.
The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage.

(3) ~~(a)~~ The maximum AND MINIMUM BENEFIT AMOUNTS ARE COMPUTED IN THE FOLLOWING MANNER:

(A) THE MAXIMUM WEEKLY BENEFIT AMOUNT IS 67.5% OF THE AVERAGE WEEKLY WAGE AND MUST BE APPLIED TO ALL MAXIMUM WEEKLY BENEFIT AMOUNT CLAIMS FOR BENEFITS FILED TO ESTABLISH A BENEFIT YEAR COMMENCING ON OR AFTER JULY 1 OF THE SAME YEAR.

(B) THE MINIMUM WEEKLY BENEFIT AMOUNT MUST BE 20% OF THE AVERAGE WEEKLY WAGE.

(C) THE MINIMUM WEEKLY BENEFIT AMOUNT, IF NOT A MULTIPLE OF \$1, MUST BE COMPUTED TO THE NEAREST LOWER FULL DOLLAR AMOUNT. and minimum weekly benefit amounts are computed in the following manner:-

~~——— (a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.~~

~~——— (ii)(b) The minimum weekly benefit amount must be 19% of the average weekly wage.~~

~~——— (iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.~~

~~(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.~~

~~——— (ii) The minimum weekly benefit amount must be 20% of the average weekly wage.~~

~~——— (iii) The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount."~~

~~Section 7. Section 39-51-2302, MCA, is amended to read:~~

~~"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.~~

~~——— (2) The individual may not be disqualified for any of the following reasons:~~

~~1 (a) The individual leaves employment because of personal illness or injury not associated with~~
~~2 misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness~~
~~3 or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to~~
~~4 and offered service to the individual's employer and the individual's regular or comparable suitable work was not~~
~~5 available, as determined by the department, provided the individual is otherwise eligible.~~

~~6 (b) The individual leaves temporary work accepted during a period of unemployment caused by a lack~~
~~7 of work with the individual's regular employer if upon leaving the temporary work the individual returned~~
~~8 immediately to work for the individual's regular employer, provided that the individual is unemployed for~~
~~9 nondisqualifying reasons.~~

~~10 (c) The individual leaves employment because of being ordered to military service, as defined in~~
~~11 40-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the~~
~~12 individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any~~
~~13 benefits paid under this subsection (2)(c) are not chargeable to the employer's account.~~

~~14 (d) The individual leaves employment because of the mandatory military transfer of the individual's~~
~~15 spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the employer's account.~~

~~16 (e) The individual leaves employment to accompany the individual's spouse or domestic partner whose~~
~~17 employment requires moving to a location sufficiently distant from the individual's employment to be impractical~~
~~18 for the individual to commute.~~

~~19 (f) The individual leaves employment to provide assistance during the illness or disability of an immediate~~
~~20 family member.~~

~~21 (3) To requalify for benefits, an individual shall perform services for which remuneration is received equal~~
~~22 to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act~~
~~23 causing the disqualification occurred unless the individual has been in regular attendance at an educational~~
~~24 institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that~~
~~25 caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."~~

NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, part 21, apply to
[sections 1 and 2].

1 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2009.

2

~~NEW SECTION. Section 10. Contingent termination. (1) [This act] terminates on the date that the commissioner of labor and industry certifies to the governor that any federal funding passed and approved for economic stimulus in 2009 or subsequent years has been discontinued.~~

~~6 (2) The governor shall transmit a copy of the certification to the code commissioner.~~

7 - END -